IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.73 OF 2006
WITH
CIVIL APPLICATION NO.69 OF 2006

The Bombay Presidency Radio Club Ltd., a Public Ltd. ..Appellant. (orig.Def.No.1)

V/s.

Kavita Nandkishor Rupani. ..Respondent. (Orig.Plaintiff)

And

Mr.Manu Vishnu Bhavnani. ..Respondents (orig.Def.2 to 15)

Mr.A.M.Saraogi for appellant.

Mr.Subhash Jha with Jimesh Shah i/b Law Global for Respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 31, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings and documents on record.

2. Admit.

3. As short question is involved, appeal is taken up for hearing forthwith by consent.

4. This appeal from order takes exception to the

order passed by the City Civil Court, Greater Mumbai dated 17th January, 2006 in Notice of Motion No.Nil of 2006 in S.C.Suit No.188 of 2006. The Trial Court has passed the following order.

> ". The effect of show cause notice excluding the plaintiff's entry to the club and use the facilities of the club is stayed till the motion is disposed off on merit. Motion for further consideration adjd. to 04.02.06.
>
> . Defendants Advocates are directed to file the reply to the motion.
>
> . Ld.Advocate Mr.Saraogi on record, prayed for stay of the order. On enquiry with the plaintiff's Advocate as to what sort of facilities, plaintiff is enjoying. He has replied that she is going to the Club and taking the food and meeting the friends etc. Under these circumstances, I have to say that there is no justification to stay of the order."

5. Respondent/plaintiff filed suit in the City Civil Court for the following reliefs.

> (a) that this Hon'ble Court may be pleased to declare that the report dated 27.12.2005 of the enquiry officer Shri Peter Lobo annexed to the show cause notice dated 9.1.2006 is a nullity and hence cannot be acted upon by the defendants;
>
> (b) that this Hon'ble Court may be pleased to hold and declare that the show cause notice bearing No.909 dated 9.1.2006 being Exhibit-'A' annexed to the plaint is illegal, arbitrary, bad in law and actuated by malafide and hence cannot be acted upon;

(c) that this Hon'ble Court may be pleased to restrain the defendants, their agents, servants and/or anybody else claiming through or under them by a permanent order and injunction of this Hon'ble Court from restraining entry of the plaintiff in the BPR Club and further restraining them from excluding entry to the plaintiff in the said club and use of the facilities of the club by the Plaintiff;

(d) that this Hon'ble Court may be pleased to restrain the defendants, their agents and servants and /or anybody else claiming through/or under them from circulating, distributing, publishing and displaying the letter dated 15.12.2005 of Shri R.V.Bhasin being Exhibit-'B' annexed to the plaint and report of the enquiry officer dated 27.12.2005 and/or similar such material containing imputation concerning plaintiff vis-a-vis the club;

(e) pending the hearing and final disposal of the suit this Hon'ble Court may be pleased to appoint Court Receiver and/or any other person and/or persons as a court receiver with a direction to take charge of all the records and proceedings concerning the holding of purported enquiry against the plaintiff and submit the same in a sealed envelope to this Hon'ble Court and if necessary, any officer of this Hon'ble Court and/or any other person/persons be appointed as enquiry officer to conduct enquiry concerning the circumstance under which Plaintiff has been victimized by the defendants and to submit his report in this Hon'ble Court within such reasonable time as this Hon'ble Court may deem fit and proper;

(f) pending the hearing and disposal of the suit this Hon'ble Court may be

pleased to appoint an officer either of this Hon'ble Court and/or any other fit and proper person to look into various acts of omission/- commission wherein wrongful loss has been caused to the club by the defendants and/or anybody else as per the finding of Shri. J.N.Tikku, Deputy Director (Inspection) appointed by the Ministry of Company Affairs, Government of India;

(g) pending the hearing and final disposal of the suit, this Hon'ble Court may be pleased to stay the execution, implementation and effect of the report of the enquiry officer dated 27.12.2005 and so also show cause notice bearing No.909 dated 9.1.2006.

(h) interim and ad-interim reliefs in terms of prayer clauses (e), (f) and (g) above be granted;

(i) cost of the suit be provided for;

(j) any other further order and/or direction be given as the nature and circumstances of the case may require.

6. During the pendency of the said suit, Notice of Motion was taken out for temporary injunction at interim stage. The trial court proceeded to pass the above order. The grievance of the appellant/original defendant before this court is that the trial court has clearly exceeded its authority in granting order of the kind passed which would permit the respondent to enter the Club premises and to enjoy all facilities of the Club, which will be contrary to the decision taken by the Club after following due

procedure as per the regulations of the Club. The Club by its communication dated January 9, 2006 informed the respondent/plaintiff that the in the backdrop of the pending enquiry, that the Committee has decided that the respondent herein shall not be allowed to enter the Club premises and use any of the facility of the Club except for meeting Assistant General Manager for inspection of documents and attending Managing Committee meetings. This direction has been issued according to the appellant after following procedure prescribed under Rule 25 of the Memorandum and Articles of Association which are binding on the respondent/plaintiff.

7. After going through the detailed order passed by the trial court at ad-interim stage, in my opinion, it is seen that the trial court has essentially reproduced the rival contentions; and the sole basis, on which it has proceeded to pass the impugned order is that, in its view, the direction issued to the plaintiff excluding her entry to the Club and using facility in the Club was "harsh". This view is taken on the premiss that even if allegations against the plaintiff are accepted as it is, it is of the nature that the plaintiff caused to purchase liquor when it was not needed or when the

stock was already with the defendants Club and she purchased tiles at the rate of Rs.1,024/- per box whereas exact same tiles are purchased and tendered by the BPR Club contractor at the rate of Rs.696/- per box. The trial court then proceeded to observe that there is no case of misappropriation but one of irregularity committed by the plaintiff. It is on this basis, the court below proceeded to pass the impugned order.

8. After hearing counsel for the parties, in my opinion, the order as passed by the trial court cannot be sustained. This is so because Rule 25(a) requires certain procedure to be observed before taking a decision to exclude the entry of the concerned member or to forebear from enjoying facility of the Club. Rule 25(a) reads thus :

> 25(a) If any Member refuses or neglects to comply with any provisions of the Memorandum or of these Articles, or any Bye-Lays made thereunder, or shall be guilty of any conduct as the Committee considers likely to endanger harmony or affect the character and stability or interest of the Club, such Member shall be liable to be suspended for a period not exceeding three months by a Resolution of the Committee passed at a Meeting Convened for the purpose; provided that not less than two-third of the total number of Members of the Committee shall have voted in favour of the same and provided also that at least 14 days before such resolution has been passed, such Member shall have had Notice thereof and

> he shall have had reasonable opportunity of making a defence. It shall be in the power of the Committee to exclude such Member from the club till such Resolution has either been passed or rejected. The Committee shall then give such Member personally or by registered post a written notice of the said Resolution. Such member shall have a right of appeal and may request the Committee to call and Extraordinary General Meeting for the purpose, which the Committee shall call and the decision of such meeting shall be final. The Resolution of the Committee shall not take effect until the disposal of the appeal, provided that, notice to appeal is lodged with the Secretaries within five days of the Resolution being communication to the Member."

9. Even on a fair reading of the entire Judgment, it is not possible to hold that the trial court Judge was of the view that there has been any procedural non-compliance. On the other hand, from the finding recorded at page 9-N of the paper book which is part of paragraph 6 of the Judgment, the trial court has clearly found as of fact that the defendants have followed the procedure by due enquiry. Once that finding was reached, it was not open to the trial court to pass ad-interim order of the nature which has been passed. In as much as, once it is held that the action is in accord with the extant regulations then the court can not sit over in appeal over the decision of the Committee on the specious reasoning that in its view the action is harsh. So long as the Regulations authorise the

Committee to take recourse to the action proposed against the Respondent; and as the Validity of the said Regulations is not in question, coupled with the finding that the Club has followed the necessary procedure, there was very little room for judicial intervention that too on the ground of action being harsh, which is the sole basis for the impugned order.

10. To get over this position, Mr. Jha, counsel for the respondent vehemently contends that the case of the plaintiff before the trial court is that the action against the plaintiff is malafide and biased and that the trial court was impressed by the said argument. Even on a liberal reading of the entire Judgment, it is not possible to accept the contention that the trial court Judge proceeded to grant relief on the prima facie finding recorded by him that the action against the plaintiff was biased. On the other hand, my reading of the Judgment is that the trial court has merely reproduced the arguments canvassed on behalf of the plaintiff as well as the materials which were pressed into service, but did not conclusively hold that the action against the plaintiff was biased-whereas at page 9-N which is the part of paragraph-6, it is observed thus :

> "At this moment only I have to say that yet that stage has not come because the defendants have followed the procedure by due enquiry."

This opinion has been recorded in the context of the grievance of the plaintiff that the action against the plaintiff is biased and malafide. At this stage of the proceedings, namely, at ad-interim stage, it is too early to record a clear finding that the action of the defendant against the plaintiff was biased and malafide. Perhaps such opinion can be recorded after the pleadings of the parties are completed and at the time of final order to be passed on the Notice of Motion. Suffice it to observe that it is not possible to countenance the order which is impugned before this court.

11. Hence this appeal should succeed. In the circumstances, the impugned order permitting the plaintiff’s entry in the club and availing facility of club is set aside. In view of disposal of appeal, the accompanying civil application is also disposed of.

12. It is made clear that the trial court shall decide all the issues arising in the Notice of Motion as well as the suit on its own merit in accordance with the law, uninfluenced by any observations made in the impugned Judgment or for that matter the present order.

13. The trial court shall decide the notice of motion as expeditiously as possible, preferably within 8 weeks from the receipt of the writ or from the knowledge of passing of the order if and when brought to the notice of the trial court.

14. The counsel for the respondent at this stage prays that the order passed today not to be given effect for two weeks and the respondent/plaintiff be allowed to utilise the facilities of the club. It is not possible to accept this request as such order could not have been passed at ad-interim stage in view of the observations already recorded in the order. Hence that request cannot be granted.